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The Role of the European Union in the Processes to Ban Cluster Munitions

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At the end of 2008 the Convention on Cluster Munitions (CCM) that outlawed almost all types of cluster munitions was signed. It was the product of the so-called Oslo process, which had been set up two years earlier as a reaction to the failure to add a new protocol banning cluster munitions to the Convention on Certain Conventional Weapons (CCW). The position of the EU in these two processes was ambivalent: on the one hand it belonged to the strongest proponents for a new protocol within the CCW, but on the other hand the member states were in general not able to act jointly in the Oslo Process. According to this working paper especially the aspect of national security and the related relationship to the United States influenced the stances of many member states and complicated the formation of a common European position. There were common normative values of the EU detected, which played a role in the CCW, but they were only secondary to other interests of the member states.

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1. Introduction*

On 1 August 2010 the “Convention on Cluster Munitions” (CCM) entered, six months after its ratification by the 29th and 30th state (Burkina Faso and Moldova) into force. Around two years earlier, at a special conference between 2 and 4 December 2008 in Oslo, 94 states^[1] had signed this document and engaged themselves to “never use cluster munitions again, to destroy their stockpiles and not to produce and sell any new cluster munitions” (Convention on Cluster Munitions, 2009, 3). This convention had been widely praised by parts of the international community: European Union (EU) High Representative Javier Solana (2008) called it for instance “an important step forward in tackling the humanitarian problems caused by cluster bombs” and the hosting Norwegian Prime Minister Jens Stoltenberg (2008) even talked about a “moral obligation”.

The process to design the CCM was a reaction to the problems to include cluster munitions as a new protocol in the Convention on Certain Conventional Weapons (CCW). A group of major stockpilers, among them the United States, Russia and China, were not convinced about the need of such a new protocol and made any progress extremely hard to achieve. Frustrated by the difficulties of this process some more ambitious countries initiated as a reaction in 2006 the so-called Oslo Process that would eventually result in the CCM.

In these two processes the EU played two different roles. Despite the warm words of Javier Solana the EU did not embrace the Oslo Process wholeheartedly and its contributions to it were rather limited. However, individually all member states of the EU participated in the Oslo Process at some point, some of them even forming part of its vanguard, and eventually 19 of the 27 countries signed the CCM, among them the so-called “big three” of France, Germany and the United Kingdom. In contrast with the low attitude of the EU in the Oslo Process, the member states were able to present a common position in the CCW. Here the EU engaged itself strongly with the objective to add a new protocol on cluster munitions to the CCW and sought a pivotal role in the negotiations.

The contrasting activities of the EU in these two processes appear puzzling and raise questions. For what reasons did the EU member states act jointly in the CCW and promoted a new protocol on cluster munitions^[2] in that arena? And why were they not able to act together in the Oslo Process, if there was apparently consensus about the need of new legal instruments to ban cluster munitions? Coming from these questions the topic of this working paper will be to see what the role of the EU in these two processes was and how these differences can be explained.

This paper is structured as following: after an explication of the methodology and the research design in the following section, there will be in the third section a description of the role of the EU in the two processes to ban cluster munitions and how these two processes influenced each other. In the fourth section there will be an analysis of these processes and the factors that influenced the behaviour of the EU and its member states. The fifth section will present the results of these elaborations and finally the working paper will be finished with a short conclusion to answer the initial questions.

2. Methodology and Research Design

To analyse the role of the EU in the processes to ban cluster munitions the method of process tracing has been applied. Its idea is to identify the intervening causal process, the causal chain and causal mechanism between an independent variable (or variables) and the outcome of the dependent variable (George & Bennett, 2005: 206). In our case the causal process that has to be identified is the relation between the policies of the EU (independent variables) and its impact on the two processes (dependent variable). On the other hand we are also interested in the motives that shaped the positions of the EU. There will not be applied just one theoretical approach to look for possible motivations, but different possible explanations will be tested. On one hand two rationalist explanations will be used (security and economical interests) and on the other hand some constructivist ideas that focus on the identity of the EU as motivation for its behaviour will be used.

To deploy process tracing as a general method requires good empirical material, given the detailed and rigorous analytical inquiry that needs to be performed. The information to map the process is for process tracing normally overwhelmingly qualitative in nature, and includes historical memoirs, interviews, press accounts and documents (Checkel, 2005: 6). To collect this information three different research tools have been used for this working paper:

- (I) a documentary research by collecting information from data sources like the conference protocols and other archival material,
- (II) the tool of elite interviewing by contacting relevant actors in all EU-member states and at the EU and asking them to fill in a questionnaire,
- (III) interviews with some actors by telephone.

The tool of elite interviewing has some added value to a documentary research, like for instance to corroborate what has been established from other sources (or not) or getting a view behind the curtain of negotiations (Tansey, 2007: 766). The hope was that by identifying the motives and assessments of the individual member states it would be easier to analyse the negotiations about a common position inside the EU. Usually there are no protocols published about the negotiations inside the Council of the EU so the process had to be reconstructed by asking involved actors. For these interviews a questionnaire was developed in which the actors were asked about their assessments of different aspects of the processes.

To select the respondents for the elite interviews different criteria were used. First, the participants list of the final Diplomatic Conference in Dublin was screened to identify relevant actors from the EU-member states which could be contacted via E-Mail. Additionally the persons which are responsible for disarmament issues at the different ministries of foreign affairs, and the permanent missions in Geneva and New York were identified and when possible contacted directly or otherwise via more general E-Mail-addresses. To be not completely dependent on governmental assessments also other sources were consulted: this included different national NGOs that are members of the Cluster Munitions Coalition (CMC) and relevant members of the European and national parliaments^[3].

In total forty-five assessments were collected from respondents from twenty-two member states. These contributions were very valuable in the endeavour to analyse the role of the EU in the two processes to ban cluster munitions. Even though you cannot attribute statistical significance

to them due to their low n-value, and their non-representative distribution (e.g. there were five Austrian and Dutch respondents, but only one French participant) they often give some interesting insights and tendencies. Additionally, the information which was gathered through these answers gave much more possibilities to analyse the process than just this data (e.g. by separating the answers in different groups or looking for correlations between variables). These findings, and different answers of respondents to open questions, are integrated in the text.

3. The processes to ban cluster munitions

In this section the two processes to ban cluster munitions (CCW and the Oslo Process) will be described with a special focus on the role of the EU. It would go beyond the scope and the objective of this paper to describe the developments in these processes in detail and there are already very elaborate summaries published which can be recommended for more information^[4]. To make the overview a bit clearer the process will be divided in three periods: the CCW before the Oslo Process, the two processes parallel and the developments after the signing of the CCM.

As starting point of this description the Third Review Conference on the CCW in Geneva (7-17 November 2006) is chosen. There had already been attempts before to add a new protocol about cluster munitions but especially the war in South Lebanon in the summer of 2006, in which Israel as well as its adversary Hezbollah used this weapon type, brought this issue back on the global political agenda (Borrie, 2009a: 229ff).

The first attempt at the United Nations (November 2006)

At this conference a group of six states^[5], among them the EU-members Austria, Ireland and Sweden, rallied to create a legally binding instrument that addressed the humanitarian concerns posed by cluster munitions (UNOG, 2006a). Looking for the reasons that motivated in particular these three actors to take a leading role two different plausible explanations come up. First, we have to take in mind that in the Ottawa Process to ban landmines these countries had also been part of a core group for a comprehensive ban (Long, 2002: 431). So one explication could be that in these three countries there was already an internal consensus reached that, in a constructivist sense, cluster munitions were as landmines earlier not compatible with the normative "identity" of the country (Wendt, 1992: 394).

Second, another element that unified these three countries was that they had a long tradition as internationalists. All three have to some extent a special position within the EU because they belong to the few member states that were neither member of NATO nor of the Warsaw Pact during the cold war and acted on different occasions as mediator between the two sides of the Iron Curtain. Until the present they belong to the small group of EU-member states that are not member of NATO^[6]. Hence, we can assume that an independent stance towards the major powers and international engagements are an important part of the political identity of these countries.

All six countries that rallied for a legally binding instrument were no major players in global terms and needed alliances to make some difference in the UN. For the EU member states it

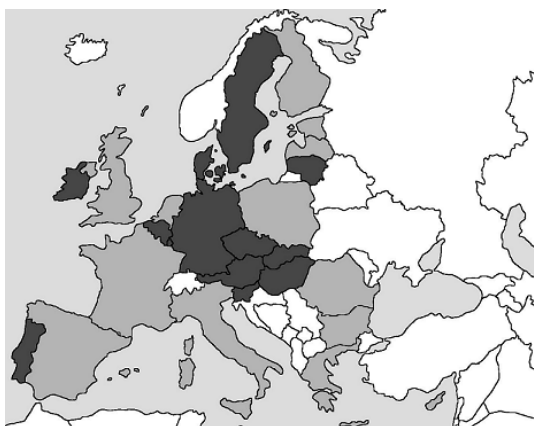


Figure 1: Graphical demonstration of the EU- Member states that supported the declaration on cluster munitions (GE.06-65381) in dark grey or not (light grey)

was an option to seek a consensus in the EU by convincing the other members to join them in their endeavour. Argumentative support they could draw from the European Parliament, which at this point had already adopted three resolutions against cluster munitions (European Parliament, 2001, 2003 and 2004). In these resolutions the parliament called for a moratorium for the use of cluster munitions until an international agreement about these weapons would have been settled. However there was only little support from the other member states as we can see in figure 1: especially the more powerful states^[7] were rather sceptical and did not back this proposal. In the end only 14 of the then 25 EU member^[8] states backed the initiative to find an agreement that would prohibit cluster munitions.

The EU^[9] was represented at this conference by Finland, who held at that moment the presidency of the European Council. The joint position of the EU was less ambitious: it advocated to set up “an open-ended Group of Governmental Experts (GGE) to address the humanitarian impact of cluster munitions with the purpose of elaborating recommendations for further action in the CCW” (UNOG, 2006c). However, even this more moderate position put the EU in contrast to different other major powers (e.g. the United States (International Campaign to Ban Landmines, 2009: 251) and China (Idem: 195)) which argued that the existing legal instruments already covered the humanitarian impact of cluster munitions and there was no need for any new protocol. Russia even went as far as stating that problems associated with cluster munitions use were “mythical” and asserted that submunitions could be accurately targeted to minimise civilian damage (Idem: 231).

As a result eventually neither the proposal which was backed by the 14 member states nor the joint proposal of the EU found its way in the final declaration. The participants could only agree to set up an intersessional meeting of governmental experts that should consider the application and implementation of existing international humanitarian law to cluster munitions (UNOG, 2006d: 6). Another meeting of experts that, according to its critics, probably would not result in visible results was not enough to several countries and so Norway –another state with a long tradition of international mediation and the ambition to be a “humanitarian superpower” (Støre, 2006) - announced as a reaction to organise an international conference in Oslo for interested countries, the UN, the Red Cross and other humanitarian organisations with the purpose to start an independent process to ban cluster munitions (UNOG, 2006e: 5).

The Oslo Process (February 2007-December 2008)

On 22/23 February 2007 46 countries, different United Nations Organisations, the International Committee of the Red Cross, the Cluster Munitions Coalition and other NGOs met in Oslo to discuss how to effectively address the humanitarian problems caused by cluster munitions. Only

four EU-members eventually did not take part in this conference^[10], thus a large group of countries that had not backed the proposal in the CCW decided nevertheless to participate (Norwegian Ministry of Foreign Affairs, 2007a). However, this was at this stage also a tactical manoeuvre because actors like the United Kingdom and France hoped to keep the CCW this way alive and to influence the Oslo Process so it would not cross any “red lines” (The Guardian, 2010). Among the absentees in Oslo were most of the world’s largest military producers and stockpilers of cluster munitions like the United States, Russia and China.

The role of the CCW remained an important issue at this conference; different countries that had not supported the proposal in Geneva argued that the CCW was the correct forum to act. Among these critics also the EU-members France, Germany, Italy and the Netherlands could be found. The main argument of them was that it would not make much sense to come to an agreement as long as some of the world’s largest producers and stockpilers of cluster munitions were not involved in it (Norwegian Ministry of Foreign Affairs, 2007b). According to a EU-official who was interviewed for this paper, it is estimated that these absent countries stockpile around 85 percent of the worldwide cluster munitions.

On the other hand, the other side (especially NGOs) argued that (I) the CCW approach could be seen in two ways: at best a ‘go slow’ approach, and if not, as a ‘do-nothing’ approach and (II) that the experiences of the landmine treaty had shown that an agreement of an avant-garde group of countries would push other countries to join the treaty (Cluster Munition Coalition, 2007a). According to their argumentation an agreement would create a dynamic that would stigmatise the use of cluster munitions for non-signatory states as well, as the Ottawa treaty had achieved in the case of landmines. That means, even if some countries would not sign the convention it would increase the political costs for them to use cluster munitions dramatically and force them to look for less controversial alternatives. The comparison with the Ottawa Treaty was often drawn and also the dispute between the proponents of a route via an UN-organisation and a new institution paralleled the discussions in the EU about the ban of landmines. Even the members of the two camps were more or less the same, therefore many debates within the EU resembled the discussions of 1997 (Long, 2002: 434).

Despite these discussions there could be reached an agreement on the Oslo Declaration, a political commitment to conclude negotiations on a new ban on cluster munitions causing unacceptable harm to civilians until the end of 2008. The declaration was supported by all but three participating states^[11], and became the “mandate” for the Oslo Process (Norwegian Ministry of Foreign Affairs, 2007c). However to avoid the drop-out of some participants in this early stage of the process it left some leeway for interpretation on critical points: its paragraph 3 for instance stated that it would continue to address “the humanitarian challenges posed by cluster munitions within the framework of international humanitarian law and in all relevant fora” which was interpreted by the more CCW-minded countries as an inclusion of their wishes. All things considered the Oslo Conference was seen as a success by most of its participants since almost all present countries agreed on the roadmap itself and to meet on four conferences to design a convention before the end of 2008.

EU-council president Germany continued to focus on the CCW and never made any statements during its presidency in the Oslo Process. In July 2007 the Council of the EU adopted a Joint Action to promote the universality of the CCW and its implementation by state parties (Official Journal of the European Union, 2007). But while supporting the CCW as the correct forum on

the one hand it introduced the humanitarian aspect from the Oslo Process to the more technical CCW process on the GGE-conference in June 2007. In its opening statement the Germans explicitly named the conferences of the Oslo Process as an inspiration and continued to propose “to establish a Group of Governmental Experts with a schedule of no less than three meetings to negotiate a legally-binding instrument that addresses the humanitarian concerns of cluster munitions in all their aspects by the end of 2008” with the aim of “concluding a legally binding instrument that prohibits the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians and includes provisions on co-operation and assistance” (German Presidency, 2007a).

However, the results of this conference were not very promising and were marked as “rather disappointing” by the EU. Germany gave a, in diplomatic terms, very clear message at the end and claimed that they had experienced broad support from all over the world for the proposal of the EU and as such it was disappointing that there could not be reached a consensus on a recommendation by this GGE to the Meeting of High Contracting Parties on a draft mandate. The GGE had in the German perspective “in this respect (...) not been fully up to the expectations that we and the world outside the CCW have of this body” (German Presidency, 2007b).

As we have seen earlier, the member states of the EU were at this point rather divided on how to deal with the Oslo Process: some were strongly in favour of the Oslo Process and belonged to the so-called Core Group of it (Austria and Ireland), some participated in both processes but had still more sympathy with the CCW-road (e.g. France, Germany and the United Kingdom) and some had not even signed the Oslo Declaration because it went already too far for them (e.g. Poland and Romania).

Inside the Oslo Process there was the emergence of a loose and amorphous group of so-called “like-minded” countries that consisted mainly of military allies of the United States (e.g. the United Kingdom and Germany). This group was, according to Borrie, motivated by two major concerns. On one hand they feared that an eventual ban on cluster munitions would encapsulate weapons they possessed (or would like to possess) which had submunitions that use sensor-fusing technologies to detect and engage individual targets. On the other hand they were worried that a cluster munitions norm would create legal and operational problems in terms of interoperability. Some of the most far-reaching proposals of a cluster munitions ban were calling for a prohibition on military joint actions with stockpiling countries (for most EU-member states de facto thus the United States); something which was not an acceptable option neither for the United States nor for its military allies (Borrie, 2009a: 173).

The Portuguese presidency in the second half of 2007 went on to rally for the EU-proposal made by its German predecessors in the CCW. At the General Assembly of the United Nations Portugal declared that they would be pleased if “the CCW regime develop(s) in a way that would further strengthen international humanitarian law, taking into account both military requirements and humanitarian concerns.” Again they called upon all High Contracting Parties to the CCW to support the EU proposal and promised that the EU would make every effort for its proposal to meet their support (Portuguese Presidency, 2007a: 5). On the Meeting of the High Contracting Parties to the CCW the EU another time tried to convince the other parties to back its proposal for this “vital element in the work of the CCW” and presented a statement

exclusively about the cluster munitions issue. However, once again the proposal of the EU was blocked by other main actors like the USA, Russia and China (Portuguese Presidency, 2007b).

In this period the EU started to act more jointly in the Oslo Process and opened itself to it. On a conference in Vienna Portugal made at least a statement on the behalf of the EU that the cluster munitions should be addressed in all relevant forums and that this work would be mutually reinforcing (Portuguese Presidency, 2007c). Also on the European regional conference, which was hosted by Belgium on 30 October 2007 and dealt with stockpile destruction and victim assistance Portugal intervened on behalf of all EU member states. Another novelty was that for the first time all 27 EU member states as well as different EU-institutions participated together in a conference related to this topic (Bauwens, 2007).

CCW and the Oslo Process continued simultaneously and influenced each other at that time. The United States was worried that the Oslo Process would become dominant and changed its position on some points to keep the other countries aboard of the CCW: in a declaration it acknowledged that there was need for reforms of the CCW to include cluster munitions (International Campaign to Ban Landmines, 2009, 253). Eventually at the meeting of the High Contracting partners in November 2007 the participants agreed in large lines to the EU proposal to start negotiations. The only major difference was that the original German-made proposal talked about a legally-binding instrument that addressed the humanitarian concerns of cluster munitions, while this mandate added that point that it had find this instrument “while striking a balance between military and humanitarian considerations” (UNOG, 2007a). The participants agreed on seven weeks of meetings scheduled in Geneva throughout 2008. This had three advantages for the “like-minded” states,

- (I) they felt sure that most major users and producers of cluster munitions, and in particular the United States, would stay engaged in the CCW-process to find an agreement,
- (II) it was presented as an evidence that the Oslo Process was not sabotaging the CCW, and
- (III) the CCW could serve as a “back-up”-plan for some countries if they could not agree with the result of the Oslo Process.

However, de facto the mandate was much weaker as the one of the Oslo Process, and different countries (e.g. China and Russia) also openly confirmed that they still did not really see the need for it.

In the first half of 2008 Slovenia took the EU-presidency for the first time in its history. The Slovenians continued the two-way course of CCW and Oslo Process and argued that the EU considered both processes “complementary and mutually reinforcing and that each forum can benefit from work done in the other, by taking advantage, *inter alia*, of the military and technical expertise of the CCW” (Slovenian Presidency, 2008a). On behalf of the EU Slovenia also claimed, after the conference in Wellington had created a draft proposal for the Oslo Process that, whatever the outcome of that process would be, it had the opinion that the CCW should continue to implement its mandate as was decided in November 2007 (Slovenian Presidency, 2008b).

This common position of the EU also did not change at the final negotiation conference of the Oslo Process in Dublin on which not all of its member states participated. An interesting element of the Slovenian opening speech was that it explicitly referred to a compendium

prepared during the Wellington Conference and that the EU was pleased that this compendium had become an official document. The compendium had been a compromise between the Core States and the Like-minded at this conference to motivate latter to agree with the declaration. In this added document all proposals of participating states were included that did not make it way in the final declaration. Many of them were delivered by members of the Like-minded group and did not make it in the draft paper due to the resistance of the Core Group and the powerful group of third world countries (the so-called “tee-total states”) (Borrie, 2009a: 215). However, through this compendium the Like-minded hoped to keep these proposals on the table for the final negotiation round. The Slovenian statement that it formed an official document “with options which should be seriously explored” was thus a clear indicator that the like-minded states had set the tune on this issue inside the EU (Slovenian Presidency, 2008c). Additionally the Slovenian opening speech repeated the EU’s mantra that parallel efforts should be pursued in the CCW, which would be supported by all EU member states as well as by some major stakeholders which were not in Dublin (Idem).

The final convention could be negotiated at a two-week diplomatic conference in Dublin (19-30 May 2008). Relatively quickly agreements could be found for issues as victim assistance or cluster munitions clearance. Some issues took a bit longer like for instance the question whether cluster submunitions could be permitted for training and development purposes and the nature of provisions relating to the particular obligations of past cluster munitions user states. But the largest obstacles remained the definition of cluster munitions and the interoperability (mainly related to cooperation with the United States). In these discussions there was no common European line, EU member states could be found in all different camps: from the promoters of the most rigid rules, to countries that declared clearly that they would not sign any treaty if their demands would not be met. In the following section this aspect will be closer examined.

Eventually a compromise could be found that allowed all the participants to sign the Convention, and in December 2008 more than 90 states, among them 19 EU-member states, signed the Convention on Cluster Munitions. In its closing statement Slovenia, on behalf of the EU, again articulated its support to the Convention but declared that it would continue to work on a CCW solution (Slovenian Presidency, 2008d).

After Oslo (July 2008-December 2009)

In the summer of 2008 a new trio presidency, consisting of France, the Czech Republic and Sweden, started its term. In its plans for the coming 18 months they declared the aim “to strengthen (...) the Ottawa Convention and the Convention on the Use of Certain Conventional Weapons” without even mentioning the Oslo Process (French Presidency, 2008: 79).

However, the CCM affected the negotiations in Geneva nevertheless. In November 2008 the Danish chair of the CCW presented another draft text which was rebuffed by a group of 26 states, among them different members of the Core Group of the Oslo Process. They argued that this draft fell behind already existing humanitarian law (the CCM) and they were not willing to sign a treaty that would form a step backwards in humanitarian terms to the agreements of the Oslo Process. On the other hand, many states that had not participated in the Oslo Process reacted with strong opposition to the idea of, as Russia pointed it out, carrying over the logic of the CCM to this process (Borrie, 2008a). In the end the participants agreed, as among others

France on behalf of the EU had proposed, to extend the negotiations to the next year and to have two extra meetings in the first half of 2009 (Borrie, 2008b).

This position of some of its member states to see the CCM as a new benchmark apparently forced the EU to include this convention more in his policies. In the report on the implementation of the European Security Strategy in 2008 the EU defined the CCM as an important step forward in responding to the humanitarian problems caused by this type of munitions, which would constitute a major concern for all EU member states. But the Security Strategy also declared that “the adoption of a protocol on this type of munitions in the UN framework involving all major military powers would be an important further step” (European Council, 2008a: 9). This ambition was later also underlined by the EU Heads of State and Government in a “Statement on Strengthening International Security” on 11 December 2008, which supported the speedy adoption of a protocol in the CCW (European Council, 2008b: 3).

Hence, the Czech Presidency in the first half of 2009 had to find a balance between the demands of the members of the former Core Group that did not want to soften the provisions of the CCM, and the objective to find a compromise in the CCW that would also include the still more hesitant “big global players”. On two GGE-sessions in 2009 the Czechs proposed that the provisions had to be compatible with the text of the CCM on one hand, but on the other hand the protocol should allow countries which did not consider themselves in a position for the moment to ratify the CCM yet to take a step in the same direction. So it appeared that the EU accepted the CCM as benchmark but changed its strategy by presenting the CCW as an alternative for states that found the CCM too ambitious with the idea that this would at least form a step in the right direction to strengthen international humanitarian law (Czech Presidency, 2009a and 2009b).

Despite this balance act also these two extra GGE sessions in 2009, and extra scheduled “informal consultations” did not bring any visible results and the split remained with on the one hand the major possessors and producers of cluster munitions and on the other hand countries that aimed for a much higher humanitarian standard (Borrie, 2009b). Therefore the chairperson of the GGE had to conclude to the Meeting of the High Contracting Parties in November 2009 that it was not possible to reach a common view on a draft proposal on cluster munitions. This Meeting gave the GGE the mandate to continue its negotiations in 2010 (UNOG, 2009)

4. An analysis: the EU in the processes to ban cluster munitions

Looking back on the processes to ban cluster munitions we can draw some conclusions that can also give insights for the future analysis of the role of the EU in similar weapon ban processes. In this section a list of five conclusions is presented that are related to current theories about the foreign policy of the EU.

The positions of many EU member states were to a large extent determined by national security interests

Analysing the factors that influenced the positions of the different EU-member states we can see that, as neorealist theories would predict, national security considerations were an important factor. This does not come as a surprise: we have to remember that these weapons

were apparently considered as a relevant contribution to the national security by most EU-member states at least at the beginning of the processes. All of them, with five exceptions ^[12], had cluster munitions stockpiled in 2006 (International Campaign to Ban Landmines, 2009: 21) so the decision makers attributed them definitely some military value.

Survey Questions 1 and 2: “How relevant were military arguments for the position of your country/most other EU-member states in the processes to ban cluster munitions?”

		Importance of military arguments for the position of your country			Importance of military arguments for the position of other countries		
		Freq.	Percent.	Valid Percent.	Freq.	Percent.	Valid Percent.
Values	Very important	8	17,8	19,0	6	13,3	14,3
	Important	11	24,4	26,2	20	44,4	47,6
	Neutral	7	15,6	16,7	9	20,0	21,4
	Not so important	14	31,1	33,3	6	13,3	14,3
	Not important at all	2	4,4	4,8	1	2,2	2,4
	Total	42	93,3	100,0	42	93,3	100,0
Lost Values		3	6,7			3	6,7
Total		45	100		45	100,0	

Source: Own elaboration

As we see in the upper table only a minority of respondents thought that military arguments did not play an important role in the formation of the position of their country's position, and an even much smaller minority considered military arguments as not important for the positions of other countries. However, the security-dimension of cluster munitions is rather heterogeneous and so three different aspects will be evaluated in this part: the relationships with the neighbouring countries, the membership in the NATO and the practical use of cluster munitions.

The relationship with the neighbouring countries

An interesting insight about the idea of perceived threats gives Figure 2. In this figure we can see which EU-member states did not sign the CCM and interestingly enough are all of them situated at the external border of the EU. To clarify this special value for bordering countries probably a short explanation of its perceived military value is required. Cluster munitions are seen as very useful weapon systems to attack moving targets and large groups of invaders, for instance a tank division. The list of types is long and goes from anti-personnel cluster bombs over anti armour cluster bombs to runway-cratering cluster bombs or mine-laying cluster bombs (Sorlis, 2009: 2). As one of its major military advantages is its ability perceived to neutralise an enemy formation or at least delay its advance significantly with relatively limited resources. One option is to simply attack them and another one is to destroy the infrastructure or form a minefield of non-exploded sub-munitions. By spreading a variety of munitions over a wide area, some which explode immediately, some timed to detonate later, some when disturbed, etc. the access to the area is denied to enemy troops, who must invest considerable time and efforts in

getting the area cleared. Though from a humanitarian stance this application is probably reprehensible, it forms an alternative to delay enemy forces since the prohibition of landmines in the Ottawa Treaty.

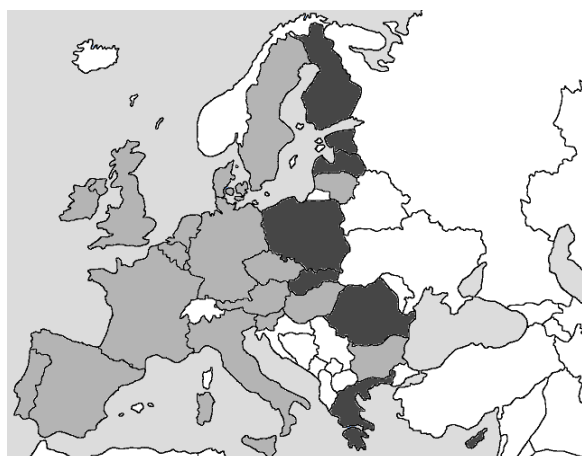


Figure 2: EU-members that signed the CCM (light grey) and did not sign the convention (dark grey)

Apparently most of these countries that did not sign the CCM still perceived a direct threat from some of their neighbours that motivated them to keep their cluster munitions. In North-East Europe especially Russia was seen as a potential threat: five EU-member states border directly to Russia (Finland, Estonia, Latvia, Lithuania and Poland) of which only Lithuania (that does not stockpile cluster munitions) signed the CCM. With the exception of Finland, the bilateral relations between these countries and Russia are for various reasons (such as their NATO-memberships and the situations of the Russian minorities) not very good.

This scepticism towards Russia was also intensified by the war in Georgia in August 2008, only shortly after the Dublin Conference. On one hand these countries perceived this war as evidence that Russia did not shy away from the use of weapons to achieve its aims, and on the other hand that war made apparent that the Russians also used their cluster munitions if the situation called for it. The idea that Russia was not willing to sign the CCM or to work on a robust reform in the CCW supported the mistrust in them.

Survey Question 3: “All EU member states that did not sign the Convention on Cluster Munitions are on the external border of the European Union. To what extent did their geographical position, in your opinion, influence their decision?”

		Frequency	Percentage	Valid Percentage
Values	Very strongly	8	17,8	20,5
	Strongly	16	35,6	41,0
	Not so much	13	28,9	33,3
	Not at all	2	4,4	5,1
	Total	39	86,7	100,0
Lost values		6	13,3	
Total		45	100,0	

Source: Own elaboration

Also in the cases of Greece and Cyprus their neighbouring countries are still perceived with caution. Both countries share a border with Turkey^[13] and had troubled relations with them in the past. Although the relations between Greece and Turkey improved significantly in the past decade, there is still conflict potential between these two countries (e.g. about the control of several islands in the Aegean Sea and the future of Cyprus) (International Campaign to Ban Landmines, 2009: 208). Next to its rivalry with Turkey, Greece also has strained relations with Macedonia, due to the long-running naming dispute. In an interview with representatives of the

Cluster Munitions Coalition a Greek official explained its country's position not to sign the CCM with "national security considerations, including the need to use cluster munitions for national defense; concerns regarding the stockpile destruction deadline and the costs of destruction; and the fact that others in the region were not ready to sign"^[14] (Idem: 207). Additionally to the politically delicate situation on the island the Cypriote foreign policy position can also be explained by its traditional line to follow the Greek position in most situations (Runner, 2008).

Nevertheless, in summary we can say that this border explanation approach is not completely satisfying: it contributes to the analysis of the considerations in some countries and most respondents attributed some importance to this argument, but it is clearly not the only relevant variable for all countries. First, it depends of course very strongly on the relationships between the neighbours: the EU external border to for example Switzerland or Norway is assessed by its neighbours differently than the borders to Turkey or Russia. Additionally this does not explain the positions of Slovakia and Romania where apparently also other factors were at stake.

Membership in NATO/ Alliance with the United States

As already briefly mentioned in section 3, the issue of interoperability was one of the crucial points in the negotiations during the Oslo Process. Interoperability meant, for most European countries, cooperation inside or outside NATO with the United States, and as such the military relations with the Americans played an important role in their formations of opinions.

This relationship with the United States had two different aspects: first, there are US-bases in Europe on which potentially cluster munitions could be stockpiled. Different countries (e.g. the United Kingdom, Italy, and diverse central and eastern European states) are legally responsible for the US-bases on their soils. So, if the USA would have stockpiled cluster munitions on their bases that could have formed a criminal offence to domestic law after the treaty would have gone in effect.

The second problem was that the USA made clear to its allies that a convention that would prohibit joint military operations with non-signatory states would seriously deteriorate their capabilities to participate in multinational military operations since the United States would not stop using cluster munitions if necessary, and as such the CCM could also harm cooperation inside NATO. Therefore the United States attempted during the different conferences, as also the results of Survey Question 4 show, to influence the Oslo Process from the outside by individual talks to its closest allies, among them different EU-member states. Together with some other traditionally close American allies (e.g. Australia and Canada) they campaigned frequently and coordinated together on this issue (Borrie, 2009a: 199ff).

Most NATO member states did not want to risk an alienation with its leading power, the United States, about this issue, since they still considered this organisation as an important cornerstone of the European security governance (Webber et al, 2004: 8) and main provider of the collective security. Additionally, the new NATO- and EU-members from central power saw NATO as a symbol of identification with the western world (as a 'return to Europe'), a security guarantee (as an insurance against perceived threats from Russia) and also as a guarantee to stay close to the USA (Idem, 2004: 22). For apparent reasons they were not willing to gamble with this new-found status for a probably rather abstract convention.

Survey Question 4: “The United States did not take part in the Oslo Process, but are of course an important stakeholder in the issue of cluster munitions. Did you have the idea that the USA, via participating countries, had some form of influence on the process?”

		Frequency	Percentage	Valid Percentage
Values	Yes	22	48,9	73,3
	No	8	17,8	26,7
	Total	30	66,7	100,0
Lost values		15	33,3	
Total		45	100,0	

Source: Own elaboration

So though he was not at the negotiation table the “primus inter pares” of NATO, the United States, still had some influence. Under the sketched circumstances most allies of the United States were not willing to sign a convention with too strict provisions and demanded an article that explicitly tolerated military operations with non-signatory parties. These demands of the American allies resulted in an article 21 that stated that it was allowed to “engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party” (Convention on Cluster Munitions, 2009).

Summarising we can conclude from this discussion that the positions of many EU member states were still strongly determined by its relationships with the United States. Most of them did not really want to risk a severe conflict with the Americans about this issue. So when the balance was made between the relationship with the USA and a humanitarian interest, the security-related alliance was put in a higher place. This priority was not shared by some countries that are not members of NATO and also formed a point of friction inside the EU. In the CCW this aspect is less relevant because the EU-member states know that a possible future compromise requires the agreement of the USA anyway. All EU-proposals that are seriously attempting to serve as a compromise solution have to take the position of the USA in consideration. As such the tension between the dependency on NATO-defence and EU humanitarian interests is not as strong there.

Practical use of cluster munitions

A major role in the altered attitude of many European countries can be attributed to their changed assessments of the tactical value of cluster munitions. In her article, Petrova (2009) gives the NGOs (such as the Cluster Munitions Coalition) a large share of the credit. The strategy of these NGOs had two objectives: (I) to denounce cluster munitions as inhuman, unethical weapons and (II) to make clear that they did not have any military value in these times (we will take a closer look on (I) later in this section).

The NGOs tried to persuade the doubting states by showing them that cluster munitions were not a sensible military tool and did not contribute to the national security, thus by creating a process of desecuritisation of this weapon type in the terms of the Copenhagen school (Wæver, 1995). On the different conferences they provided lectures and workshops by experts who explained this argument. Different experiences in the wars in Afghanistan and Iraq had for

instance shown that heavy use of cluster munitions can be a rather two-edged sword from a military perspective: the advance of the allied troupes was delayed due to “mine fields” of unexploded cluster munitions and during the American invasion in Iraq in 2003 eight US-soldiers were even killed by non-exploded cluster munitions (Wiseman, 2003).

Another serious problem lies in the nature of modern warfare: nowadays a primary objective to win wars like in Afghanistan or Iraq is to win the “hearts and minds” of the population. However, high civilian casualties and human suffering due to cluster munitions are complicating this aim severely and sabotage the political goals of these campaigns. NGOs pointed in their campaigns explicitly to this point to prove doubting actors like the USA or the UK that it is in their own tactical interest not to use cluster munitions anymore (Petrova, 2009: 13).

On the last conference in Dublin, while the United Kingdom still had its doubts, a public letter by nine retired UK-generals was published in *The Times* in which they advised their country to sign the convention because cluster bombs were “inaccurate and unreliable weapon systems, (that caused) the loss of civilian lives, (provoked) strong national and international reaction and opposition, (and) it (was) very likely that such projection will inhibit the achievement of any political purpose” (*The Times*, 2007). Naturally, such a statement from profiled military experts weakened many arguments about the value of cluster munitions for the national security of the United Kingdom. Thus summarising we can say that by acting inside the framework of neorealist thinking, there was more effect expected as by only referring to ethical standards (Petrova: 13ff).

Survey Question 5: “How would you estimate the importance of cluster munitions to the national security of your country?”

	Public Servants in countries that <u>signed</u> the CCM		Public Servants in countries that <u>did not</u> sign the CCM		All Respondents	
	Absolute	Percentage	Absolute	Percentage	Absolute	Percentage
Very important	1	4,5	0	0	3	6,7
Important	4	18,2	4	66,7	10	22,2
Not so important	10	45,5	2	33,3	17	37,8
Not important at all	7	31,8	0	0	15	33,3
Total	22	100,0	6	100	45	100

Source: Own elaboration

In the upper table public servants are highlighted, because they formed the group the NGOs had to convince that cluster munitions were an obsolete weapon type. We can see that public servants from countries that signed the CCM in majority did not attribute a high importance to cluster munitions in relation to the national security of their respective countries, while the respondents from non-signatory states assessed them as important. Unfortunately we do not have data from 2006 to see if the perceptions of the actors changed in the past three years as a result of persuasion by the NGOs, or if these states already before were not convinced about their practical necessity. But, looking on the data of all respondents, we can conclude that at the moment there is a consensus in most EU-member states that the practical contribution of cluster munitions to its national defence it limited.

The positions of the EU-member states were only to a limited extent determined by economic aspects

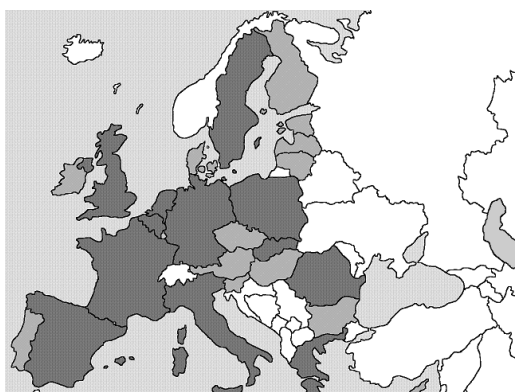


Figure 3: EU-members that produced cluster munitions (dark grey) and non-producers (light grey)

While we have seen that neorealist assumptions that put the national security of countries in the centre of its policies considerations were backed by the analysis of these processes, liberal arguments that give economic motives a larger role have less explanative power.

As Figure 3 shows, cluster munitions were produced in almost half of the EU member states in 2006 (International Campaign to Ban Landmines, 2009: 21). In the national debates the argument that the CCM would form a threat to producing industries was occasionally vocalised (e.g. in Poland (Górka, 2008) but eventually there

was no strong correlation between the economic dimension and the signing of the CCM: also most states with producing facilities signed this convention (International Campaign to Ban Landmines, 2009: 18). Among the respondents which were asked about their assessment of the importance of the defence industry in their countries the opinions were divided. However, there was no correlation between the countries with an “important” defence industry and their policy towards the CCM. Many of the countries that did not sign the CCM actually did not even produce cluster munitions themselves.

Survey Question 6: “How would you estimate the economic importance of the defence industry to your country?”

		Frequency	Percentage	Valid Percentage
Values	Very important	2	4,4	4,7
	Important	16	35,6	37,2
	Not so important	16	35,6	37,2
	Not important at all	9	20,0	20,9
	Total	43	95,6	100,0
Lost values		2	4,4	
Total		45	100,0	

Source: Own elaboration

Another economic dimension is the costs to replace these weapons. Several countries argued that they could not handle the costs in replacing this weapon type on a short term and needed more time to fade them out. An example for such a case is Finland. The Fins had not signed the Ottawa Treaty about landmines with the argument that they needed them to protect its 1300-kilometre long border until they would find an alternative. They subsequently chose cluster weapons as this alternative and promised to destroy their landmines by 2016. So banning cluster munitions would be from the Finnish perspective on one hand a significant weakening of their national defence and on the other hand also an expensive exercise. According to Finnish army estimations it would cost the country more than a billion Euros in replacement weapons to

defend its eastern border (YLE, 2008). Because of these reasons Finland did not sign the CCM, even though it applauded its humanitarian motives.

Most countries also tried to include exceptions for weapon types that were constructed in their country or which they owned during the Oslo Process, but in most cases this was not a decisive point in the negotiations (though there were exceptions as the example of Finland shows). To solve the problem of the costs to change to other weapon systems different actors rallied for longer transitional periods. Eventually these actors could influence the Oslo Process in a way that there is a transitional period of eight years included in article 3 of the CCM. There is even the opportunity to exceed this period longer with the approval of the other states parties (Convention on Cluster Munitions, 2009). So doubting states got the opportunity to depreciate the replacing costs over a longer period. This article made it to the countries that were worrying about this potential costs somewhat easier to swallow this bitter pill.

Survey Questions 7 and 8: “How relevant were economical arguments for the position of your country/most other EU member states in the processes to ban cluster munitions?”

		Importance of economic arguments for the position of your country			Importance of economic arguments for the position of other countries		
		Freq.	Percent.	Valid Percent.	Freq.	Percent.	Valid Percent.
Values	Very important	2	4,4	4,8	2	4,4	4,8
	Important	4	8,9	9,5	13	28,9	31,0
	Neutral	11	24,4	26,2	15	33,3	35,7
	Not so important	19	42,2	45,2	12	26,7	28,6
	Not important at all	6	13,3	14,3	0	0	0
	Total	42	93,3	100,0	42	93,3	100,0
Lost Values		3	6,7		3	6,7	
Total		45	100,0		45	100,0	

Source: Own elaboration

The upper table shows that there was an interesting difference between the assessment of the importance of economic arguments for the own country, and for other countries. While most respondents answered that economical arguments did not play a big role in the formation of their own country's position, their assessment of other countries is less clear. There were slightly more respondents that thought that economic arguments played a role for “the others” than not. A possible explanation of this phenomenon can be that some respondents tend to have a positive self-image of themselves as countries that care about humanitarian motives, while they suspect that the positions of the other actors were rather motivated by “more materialist” reasons.

So the summarising picture remains a bit fuzzy: apparently there were some differences between the levels of economic importance attributed to the production of cluster munitions between the states. Nevertheless it appears to have been only a secondary issue for most of them. Additionally, for the producing countries the CCM even offered economic opportunities: it

is possible that many of the signatory states will rearm themselves in the future with new types of cluster munitions that fulfil the criteria of the CCM. Hence, if the national producers in these countries are able to design cluster munitions that comply with the new standards set by the convention then there is even new sales potential for their products. This prospect could probably also have softened the pain for the producing companies.

A common European emphasis on the promotion of human security played a role in the shaping of the positions of the member states.

While most of the conclusions up to now are linked to rationalist theories, the following three conclusions are more connected to constructivist approaches. They all deal with the (perceived) identity and the common values of the EU, and how it influenced the positions of its member states (Manners 2001, 2008).

Proponents of a ban on cluster munitions had to create a link between these values and their own positions. Two patterns can be identified in the European Council in this regard: one is that the actors rely on existing norms which are part of the identity of the EU (norm guided behaviour), the other that they have a debate in which they try to discuss which norms are applicable or what they prescribe for a given situation (deliberation) (Warntjen, 2010). According to this approach, even smaller countries can influence the Council strongly by convincing other member states that their position is most appropriate to EU-norms and shape like this the common position of the EU. As we can see in the following table among the respondents there was also some support for the linkage between an agreement on cluster munitions and an perceived common identity of the EU that gives human rights great priority.

Survey Question 9: “The emphasis on an agreement on cluster munitions is related to a common identity of the European Union that gives human rights great priority.”

		Frequency	Percentage	Valid Percentage
Values	Completely agree	3	6,7	7,0
	Agree	17	37,8	39,5
	Neutral	11	24,4	25,6
	Disagree	8	17,8	18,6
	Completely disagree	4	8,9	9,3
	Total	43	95,6	100,0
Lost values		2	4,4	
Total		45	100,0	

Source: Own elaboration

To advocate the idea that a weapon of which one third of all recorded victims are children, many of them killed or mutilated even after a war, can be in contrast to the concept of human security as advocated by the EU, appears as a relatively easy task (Cluster Munition Coalition, 2009). The data of the questionnaire gives overwhelming support to the idea that humanitarian arguments played an essential role: an overwhelming majority of the respondents claimed that humanitarian arguments were “important” or “very important” in shaping the position of their country. The same pattern could be seen when the respondents were asked if humanitarian

arguments influenced the positions of other countries: again almost all respondents attributed to them a crucial role.

Survey Questions 10 and 11: “How relevant were humanitarian arguments for the position of your country/most other EU member states in the processes to ban cluster munitions?”

		Humanitarian Arguments Position Of Your Country			Humanitarian Arguments Position of Other Countries		
		Freq.	Percent.	Valid Percent.	Freq.	Percent.	Valid Percent.
Values	Very important	26	57,8	60,5	22,0	48,9	52,4
	Important	11	24,4	25,6	15,0	33,3	35,7
	Neutral	4	8,9	9,3	4,0	8,9	9,5
	Not so important	1	2,2	2,3	1,0	2,2	2,4
	Not important at all	1	2,2	2,3	0,0	0,0	0,0
	Total	43	95,6	100,0	42,0	93,3	100,0
Lost Values		2	4,4		3,0	6,7	
Total		45	100,0		45,0	100,0	

Source: Own elaboration

Additionally proponents in the EU could rely on moral support from supranational European institutions since as well the European Parliament as the European Commission had endorsed the attempts to create a legal instrument. In total the European Parliament has adopted four resolutions against cluster munitions (European Parliament, 2001, 2003, 2004 and 2007). In November 2008, as a reaction to the signing of the Convention on cluster munitions, it adopted a resolution that called “on all States to sign, ratify and implement the CCM at the earliest opportunity” (European Parliament, 2008). But on the other hand, only around one third of the respondents thought that the statements had influenced the process and that this support came mainly from proponents. Some officials from Austria and Belgium answered in the questionnaire that the resolutions strengthened their positions somewhat.

Also the European Commission supported the efforts to create a legal instrument. Though the European Commission had in this field no direct influence on the common foreign policy of the EU they were a stakeholder and participated as observer in the different conferences. The reason was that the European Commission is very engaged in countering the problems created by landmines and explosive remnants of war, including cluster munitions, as part of their humanitarian aid and development policy (European Commission, 2008a). Up to date the EU spent 1.5 billion Euro in demining programmes, research and the development of technology and assistance to mine victims, making it the largest donor in this field (European Commission, 2009). Therefore the European Commission was a supporter of the Oslo Process and welcomed the adoption and the signing of the treaty (European Commission, 2008b).

Survey Question 12: “The European Parliament as well as the European Commission spoke themselves out against cluster munitions. Did these statements affect the position of your country in some way?”

		Frequency	Percentage	Valid Percentage
Values	Yes	12	26,7	35,3
	No	22	48,9	64,7
	Total	34	75,6	100,0
Lost values		11	24,4	
Total		45	100,0	

Source: Own elaboration

Another very important factor was, according to the respondents, the role of NGOs. Coordinated by the Cluster Munitions Coalition they campaigned well-coordinated and effectively to present their viewpoints and demonstrate the human consequences of these weapon systems (Petrova, 2009). Virtually all respondents attributed an “important” or “very important” role to NGOs in the process. The large majority responded that NGOs impacted their countries to some extent.

Survey Question 13: “How would you assume the role of NGOs (e.g. the Cluster Munition Coalition) in the Oslo Process?”

		Frequency	Percentage	Valid Percentage
Values	Very important	28	62,2	63,6
	Important	15	33,3	34,1
	Not so important	1	2,2	2,3
	Not important at all	0	0	0
	Total	44	97,8	100,0
Lost values		1	2,2	
Total		45	100,0	

Survey Question 14: “What impact did the campaigning of NGOs have on the position of your country?”

		Frequency	Percentage	Valid Percentage
Values	Strong impact	13	28,9	29,5
	Some impact	20	44,4	45,5
	Little impact	9	20,0	20,5
	No impact at all	2	4,4	4,5
	Total	44	97,8	100,0
Lost values		1	2,2	
Total		45	100,0	

Sources: Own elaboration

It can be concluded that humanitarian arguments definitely played an important role in shaping the positions of the different EU-member states. The idea that human rights are a part of the EU-identity was supported by the respondents; a large majority of them confirmed this statement as well as the statement that human rights played a central role in this process.

A perceived European emphasis on the promotion of multilateralism only played a limited role in the shaping of the positions of the member states.

Generally the EU is seen as one of the strongest promoters of multilateral institutions and in particular the UN (Brantner, 2010: 169). In its plan for their coming term the French-Czech-Swedish trio presidency wrote for instance in its programme: “the Union will deploy its efforts in support of an effective multilateral system based on international law and on the United Nations Charter. It will actively participate in multilateral forums, particularly the United Nations, and will promote multilateral solutions to common problems” (French Presidency, 2008: 79).

Survey Question 15: “Ad hoc-multilateralism, like the Oslo Process, is a potential threat to the influence of multilateral institutions as the United Nations.”

		Frequency	Percentage	Valid Percentage
Values	Completely agree	4	8,9	9,3
	Agree	6	13,3	14,0
	Neutral	3	6,7	7,0
	Disagree	13	28,9	30,2
	Completely disagree	17	37,8	39,5
	Total	43	95,6	100,0
Lost values		2	4,4	
Total		45	100,0	

Survey Question 16: “The European Union favoured the CCW to the Oslo Process because of its identity that supports multilateral institutions like the United Nations.”

		Frequency	Percentage	Valid Percentage
Values	Completely agree	5	11,1	11,6
	Agree	8	17,8	18,6
	Neutral	13	28,9	30,2
	Disagree	13	28,9	30,2
	Completely disagree	4	8,9	9,3
	Total	43	95,6	100,0
Lost values		2	4,4	
Total		45	100,0	

Sources: Own elaboration

This emphasis on “effective multilateralism” could serve as an explanation of the preference of the EU of the CCW above the Oslo Process. The reason would be that the EU would have been afraid that the Oslo Process could give a bad example to other problems inside the United Nations and weaken this organisation slightly. If every time there was not easily a consensus possible inside the frameworks of the UN, a new organisation or Convention would be started that would weaken that organisation step by step. This was also a fear which was articulated inside the UN at the beginning of the Oslo Process (Borrie, 2009a: 245). Following this logic, as a promoter of the UN, the EU would have had to defend the CCW-route against the ad-hoc multilateralism of the Oslo Process.

However, when confronted with this theory, most of the respondents did not agree with it and claimed that this form of ad-hoc multilateralism did not form a threat to the United Nations. An explanation is that the initiators were careful to design the Oslo Process not as a competitor to the UN and also UN-institutions were involved in it. Indicators are that the CCM was presented to the UN General Secretary and can now be signed at the UN Headquarters in New York. With these symbolic actions the participants intended to show their loyalty to the UN. Asked if the EU favoured the CCW to the Oslo Process because of this motive the majority of the respondents denied this.

Horizontal Europeanization did not play a major role in this process

According to Long horizontal Europeanization formed an important factor in the Ottawa Process that resembled the Oslo Process to some regard (Long, 2002: 441). Through continuous consultations the EU agreed in that case eventually to a common position. So on first sight it appears to be very likely that a similar pattern occurred in the Oslo Process. However, this explanation got only little support from the respondents: only few of them thought that Europeanization had influenced the position of their or other countries. The majority was rather sceptical about this explanation approach.

Survey Questions 17 and 18: “How relevant was European influence for the position of your country in the processes to ban cluster munitions?”

		Importance of European influence on the position of your country			Importance of European influence on the position of other countries		
		Freq.	Percent.	Valid Percent.	Freq.	Percent.	Valid Percent.
Values	Very important	0	0	0	0	0	0
	Important	7	15,6	17,5	7	15,6	17,5
	Neutral	11	24,4	27,5	14	31,1	35,0
	Not so important	14	31,1	35,0	15	33,3	37,5
	Not important at all	8	17,8	20,0	4	8,9	10,0
	Total	40	88,9	100,0	40	88,9	100,0
Lost Values		5	11,1		5	11,1	
Total		45	100,0	45	100,0		

Source: Own elaboration

The difference to the Ottawa Process was that in our case the group of opponents was larger (in the Ottawa Process only Greece and Finland opposed the treaty in the final stage of the negotiations) and that there were apparently more fundamental security issues at stake. Drawing on the earlier mentioned “neighbourhood-argument” we have to keep in mind that at the time of the Ottawa Process all member states of the EU-15 but Greece and Finland bordered to countries that would become a member of the EU and in most cases NATO in the nearby future^[15]. So landmines were –as Long calls them- to most member states a “soft security issue”, since almost all member states had good relations with their neighbours. Only the Greeks and Fins preferred to keep themselves at least the option open to use these

weapons. But after the EU-enlargements in 2004 and 2007 the group of sceptical countries grew and was apparently harder to impress or to put under pressure as ten years before. Another explanation for a weaker Europeanising effect in this process in comparison to the Ottawa Process is that the EU-presidencies in that time were not members of the Core Group. Long argues that in the process ten years earlier three successive Council Presidents - Ireland, the Netherlands and Luxembourg – were proponents of a ban and kept the issue alive (Long, 2002: 441). However, the Council Presidents during the processes to ban cluster munitions belonged mainly to the middle camp, so they were not so keen on using their political capital on this issue.

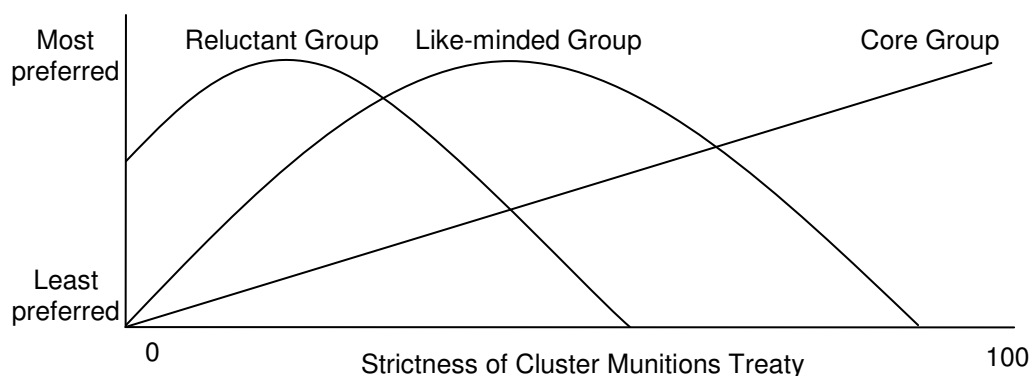
5. Results

The initial question of this working paper was what role the EU had played in the processes to ban cluster munitions, the CCW and the Oslo Process, and how the differences could be explained. In the Oslo Process there were very evident differences between the member states of the EU. Some belonged to the avant-garde of the process, most were more middle-of-the-road and some others eventually did not sign this convention at all. On the other hand, despite these differences the EU managed to have a common policy in the CCW. Hence, the question is how this paradox can be explained?

To give the answer in a graphical way, two figures will be used. The first one –Figure 4- shows the positions of the different countries. To keep the figure clear, the EU-member states are grouped in three main groups: the reluctant group (e.g. Finland and Poland), the largest group of the “like-minded” (including the “big three” of France, Germany and the UK) and the Core Group with Ireland and Austria. In reality, there were of course 27 different preference curves and many countries were between these groups situated, but to show them all would make this figure too confusing.

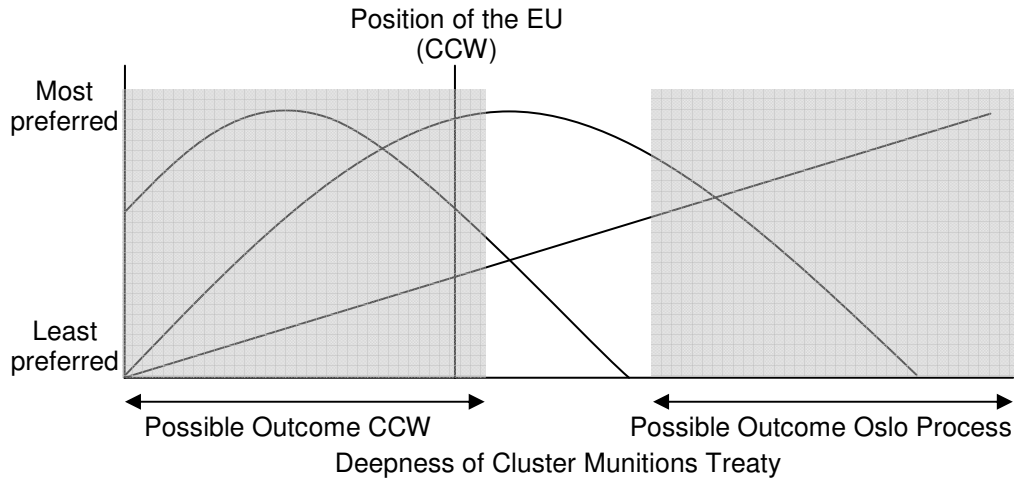
On the x-axis the “strictness of the cluster munitions treaty” can be found. This term is of course rather broad and simplifying, because there were differences between the preferences on different issues, but the general tendency was that countries who acted strictly or reluctantly on one issue, also acted in a similar way on other issues. On the y-axis we can see the attitude of the three groups towards a policy position, that means the higher the value the more preferred is this position.

Figure 4: Differences between the CCW and the Oslo Process I



As we can see has the preference curve of the Reluctant Group its peak on a rather low value, the Like-minded preferred a deeper treaty, and the Core Group wanted a treaty as ambitious as possible. These values we will use in another figure now, also taking the possible outcome of the CCW-process and the Oslo Process in consideration.

Figure 5: Differences between the CCW and the Oslo Process II



The most ambitious common position that the EU could achieve on this issue is marked with the line “Position of the EU (CCW)”. We have to keep in mind that a common position had to be more attractive to an actor than not forming a common position at all. The line in Figure 5 marks the point from which the preference curve of the reluctant countries is lower than the point 0 on the x-axis, hence from where they preferred not to have a treaty at all instead of a treaty with this level of strictness. While this position is very close to the most preferred outcome of the like-minded group, it is far below the desired outcome of the members of the Core Group.

Another element which was introduced in this figure is the grey blocks that stand for the possible outcome of the CCW and the Oslo Process. While the CCW-negotiations, due to the hesitance of key players as the USA, Russia and China, had only a relative moderate expected outcome, the Oslo Process started already with a much more ambitious expected result, because of the absence of these actors. As Figure 5 shows was the possible outcome of the Oslo Process for the reluctant countries worse than no treaty at all, the like-minded group would have preferred a bit less ambitious programme but still preferred it to no treaty at all, and the core group wanted a treaty as deep as possible. However, the common position of the EU could only serve as a position inside the CCW-process, because it was too moderate for a position in the Oslo Process. On the other hand, the smallest common denominator of the EU-member states already formed an ambitious position in the CCW-process.

Figure 5 also shows why the process in the CCW was especially supported by the like-minded group: the expected outcome was closer to their own interests. Additionally the CCW could serve them as an “emergency exit”: there they could act as a humanitarian actor and advocate a ban, while it was very unlikely that countries like Russia and China would agree with these proposals anyway. So the reluctant players inside the EU could wash their hands in innocence and fulfil its humanitarian self-image without paying any price.

On the other hand, according to a EU-official who was interviewed, also the Core States were not so interested in a common EU-position. Figure 5 also gives a graphical explanation for that: the common European position was much under the positions these countries had. Austria and Belgium, for instance, already had national regulations to destroy its cluster munitions at the beginning of the process. This made it naturally easier for them to rally for very strict provisions, as from a security perspective there was no longer anything at stake for them. For these motives they assumed that it was tactically better to act independently and to try as a member of the Core Group to achieve a more ambitious result in the Oslo Process, instead of joining a much less ambitious common European position.

We can back these assumptions also with data from the survey done for this paper as the two tables below show. The respondents agreed with the idea that it was easier for the EU-member states to form a position inside the CCW-process than in the Oslo Process due to its less ambitious targets, and that the ambitious premises of the Oslo Process made it impossible to form a common position in that arena. To go back to the initial question, we can therefore explain these differences by a combination of national, rational interests that the member states had; the expected outcomes of the processes and normative motives.

Survey Question 19: “It was easier for the member states of the European Union to get a common position inside the CCW than in the Oslo Process, because this process has less ambitious targets.”

		Frequency	Percentage	Valid Percentage
Values	Completely agree	6	13,3	14,0
	Agree	15	33,3	34,9
	Neutral	12	26,7	27,9
	Disagree	7	15,6	16,3
	Completely disagree	3	6,7	7,0
	Total	43	95,6	100,0
Lost values		2	4,4	
Total		2	4,4	

Source: Own elaboration

Survey Question 20: “Because the positions of some member states were too far from the premises of the Oslo Process there was no common position in this process.”

		Frequency	Percentage	Valid Percentage
Values	Completely agree	16	35,6	37,2
	Agree	12	26,7	27,9
	Neutral	7	15,6	16,3
	Disagree	7	15,6	16,3
	Completely disagree	1	2,2	2,3
	Total	43	95,6	100,0
Lost values		2	4,4	
Total		45	100,0	

Source: Own elaboration

6. Conclusion

The initial questions of this paper have been what role the EU played in the two processes to ban cluster munitions and how to explain their different positions. The first part of this question can be answered briefly by concluding that they only played a small role. In the Oslo Process the EU did not play a relevant role as a common actor, and in the CCW it acted more prominently but could hardly achieve any successes in terms of progress of a treaty, due to the very reluctant positions of main actors as the USA, China and Russia.

In both arenas, Oslo and CCW, the EU-member states were defending in the first place their individual interests, mainly motivated by security considerations. But, while they were to some extent limited in the CCW by the joint statements, they were not limited in the pursuit of their interests in the Oslo Process. Therefore matters as the definitions of cluster munitions and possible exceptions, made large differences between the positions of the EU-member states evident. However, despite these differences the EU managed to act in the CCW together and this can be partly attributed to normative arguments and common values. Between the member states of the EU there was a consensus about the humanitarian urgency to create a legal framework to tackle the inhuman consequences of cluster munitions. The consequences of this weapon type were seen as non-consistent with the ideas the EU promotes as human security. Nevertheless, the EU only agreed on rather broad statements formed by the lowest common denominator that served as a framework in which the member states acted. As a result even inside the CCW there were different policies of the EU-member states deployed.

These differences inside the EU seem to continue also in the present after the ratification of the CCM. While the EU has nowadays a policy that advocates the CCW as an alternative “light”-version of the CCM for countries that are not willing to sign the CCM yet, some member states have positioned themselves openly against this, and argue that any reform of the CCW has to use the CCM as minimum level.

Summarising we can say that the policies of the member states of the EU, at least in security issues, seem to be still strongly determined by national interests. This makes the EU also very vulnerable to attempts to break up their common positions. If member states perceive an issue as a potential threat to their security, like for instance a worse relationship with the United States, they rank these priorities higher than European interests or values. So, to stress a biblical expression, the spirit of common European policies is probably willing, but the flesh of the member states is weak.

Notes

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^[1] The current status of the EU member states can be found in appendix 1.

^[2] There is not one undisputed definition of cluster munitions and its definition was actually one of the most delicate issues during the negotiations in the Oslo Process. However, for the sake

of the argument, we can use following three key elements to have an idea of this weapon system (1) Cluster munitions consist of both a parent carrier munition and several explosive submunitions, (2) Cluster munitions function by delivering submunitions over a wide area from aircraft or land-based systems, and (3) Cluster munitions are area weapons. (Cluster Munitions Coalition, 2010)

[3] In most cases members of subject-related commissions or working groups inside the parliaments were approached.

[4] A very comprehensive overview gives “Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won” written by John Borrie and published by the United Nations Institute for Disarmament Research (UNIDIR)

[5] Austria, the Holy See, Ireland, Mexico, New Zealand and Sweden

[6] Next to these three countries only Cyprus, Finland and Malta are no members of NATO.

[7] “Powerful” is here defined in terms of votes in the Council of the EU; out of the eight member states with the most votes only Germany backed this proposal.

[8] Austria, Belgium, Czech Republic, Denmark, Germany, Hungary, Ireland, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia and Sweden

[9] Plus the at that moment acceding countries Bulgaria and Romania

[10] Bulgaria, Cyprus, Estonia and Greece.

[11] Japan, Poland and Romania

[12] Cyprus, Latvia, Lithuania, Luxembourg and Ireland

[13] In the northern half of the island of Cyprus, in the self-declared Turkey-backed “Turkish Republic of Northern Cyprus”, are two divisions of the Turkish army stationed.

[14] De facto Turkey is the only neighbouring state of Greece that did not sign the CCM.

[15] Except the borders to Norway and Switzerland.

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Appendix 1: Overview of the situation of the EU- member states (As of 31 December 2009)

	Signatory CCM	Ratified CCM	Producer CB	Stockpilar CB	User CB
Austria	X	2 Apr 2009		X	
Belgium	X	22 Dec 2009	X	X	
Bulgaria	X				
Cyprus					
Czech Republic	X			X	
Denmark	X			X	
Estonia				X	
Finland				X	
France	X	25 Sep 2009	X	X	X
Germany	X	8 Jul 2009	X	X	
Greece			X	X	
Hungary	X			X	
Ireland	X	3 Dec 2008			
Italy	X		X	X	
Latvia					
Lithuania	X				
Luxembourg	X	10 Jul 2009			
Malta	X	24 Sep 2009			
Netherlands	X		X	X	X
Poland			X	X	
Portugal	X			X	
Romania					
Slovakia			X	X	
Slovenia	X	19 Aug 2009			
Spain	X	17 Jun 2009	X	X	
Sweden	X		X	X	
United Kingdom	X		X	X	X

Sources: International Campaign to ban Landmines (2009), Homepage Cluster Munitions Coalition (2009)